

**NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.**
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

NOV -3 2011

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

JACQUELINE PARKER,)	
)	2 CA-CV 2011-0024
Plaintiff/Appellant,)	DEPARTMENT A
)	
v.)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
ARIZONA REGISTRAR OF)	Rule 28, Rules of Civil
CONTRACTORS and THE SOLAR)	Appellate Procedure
STORE, LLC,)	
)	
Defendants/Appellees.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. C20098617

Honorable Carmine Cornelio, Judge

AFFIRMED

Jacqueline Parker

Tucson
In Propria Persona

Durazzo & Eckel, P.C.

By Patric E. Durazzo and Eric Hawkins

Tucson
Attorneys for Defendant/Appellee
The Solar Store

B R A M M E R, Judge.

¶1 Appellant Jacqueline Parker appeals from the trial court’s judgment affirming the decision of the Arizona Registrar of Contractors (ROC). She contends here, as she did below, that some of the ROC’s findings of fact and conclusions of law are not supported by substantial evidence, are contrary to law, arbitrary and capricious, or an abuse of discretion. Specifically she contends, contrary to the ROC’s determination, her solar water heater had been sold and installed in violation of state law by appellee the Solar Store. We affirm.

Factual and Procedural Background

¶2 We view the evidence in the administrative record in the light most favorable to sustaining the agency’s decision. *See Tornabene v. Bonine ex rel. Ariz. Highway Dep’t*, 203 Ariz. 326, ¶ 2, 54 P.3d 355, 358 (App. 2002). Parker purchased a house from Pulte Homes. Pulte had contracted with the Solar Store to install a solar water heater in the house Parker purchased. Parker filed an ROC complaint against the Solar Store alleging her solar hot water system did not provide adequate hot water and the Solar Store had refused to correct the problem. The Solar Store sent several representatives to Parker’s house to inspect the system but Parker was unable to demonstrate to them that the system was not working. The ROC also sent an inspector to her home to evaluate the situation. After an inspection of the system, the inspector determined her complaint should be closed because “proof of lack of hot water could not be shown at inspection.” The inspector did, however, state that pursuant to a “jobsite agreement” the Solar Store was required to provide a document indicating the system was

SRCC¹ certified. The Solar Store provided this documentation in the form of two letters—one from the Solar Store and one from the manufacturer—both stating Parker’s system complied with SRCC OG-300 certification requirements. Tucson Electric Power (TEP) also sent Parker a letter indicating the system was SRCC OG-300 certified.

¶3 Parker then filed a request for a formal citation against the Solar Store and a request for a hearing with the Office of Administrative Hearings (OAH). *See* A.R.S. §§ 41-1092 through 41-1092.12. The ROC inspector conducted another inspection before the hearing. After the hearing, the OAH Administrative Law Judge (ALJ) determined there was no substantial evidence the Solar Store had “disregarded or departed from the specifications for [Parker]’s hot water heater” or had engaged in wrongful or fraudulent conduct, or rendered poor workmanship. Parker filed a petition for rehearing, which was denied. The ROC adopted the ALJ’s recommendation and issued a final decision.

¶4 Parker then sought judicial review of the ROC’s final decision in superior court pursuant to the Administrative Review Act (ARA), A.R.S. §§ 12-901 through 12-914. The trial court affirmed the ROC’s decision, and this appeal followed.

Discussion

¶5 “When an administrative decision is appealed to the superior court pursuant to the [ARA], the superior court decides only whether the administrative action

¹The SRCC is the Solar Rating and Certification Corporation. It is an independent organization that administers a national certification and rating system for solar energy devices. The OG-300 rating and certification program covers solar hot water systems.

was illegal, arbitrary, capricious or involved an abuse of discretion.” *Havasu Heights Ranch & Dev. Corp. v. Desert Valley Wood Prods., Inc.*, 167 Ariz. 383, 386, 807 P.2d 1119, 1122 (App. 1990); *see also* § 12-910(E) (court must affirm unless agency action “is not supported by substantial evidence, is contrary to law, is arbitrary and capricious or is an abuse of discretion”). In appeals taken pursuant to the ARA, the superior court does not weigh the evidence but rather determines whether there was substantial evidence to support the administrative determination. *Carondelet Health Servs. v. AHCCCS*, 182 Ariz. 502, 504, 897 P.2d 1388, 1390 (App. 1995). We review the court’s judgment “to determine whether the record contains evidence to support [it]” and, therefore, necessarily reach the same underlying issues. *Havasu Heights*, 167 Ariz. at 386, 807 P.2d at 1122. And on appeal from the superior court we apply the same standards of review, *id.* at 386-87, 807 P.2d at 1122-23, reviewing any legal conclusions de novo, *Tornabene*, 203 Ariz. 326, ¶ 12, 54 P.3d at 361.

¶6 We confine ourselves to addressing those arguments Parker supports by citation to the record and authority.² *See* Ariz. R. Civ. App. P. 13(a)(6) (appellate brief argument shall contain “citations to the authorities, statutes and parts of the record relied on”); *Polanco v. Indus. Comm’n*, 214 Ariz. 489, n.2, 154 P.3d 391, 393-94 n.2 (App. 2007) (failure to develop and support argument waives issue on appeal). Parker argues

²Parker provides some references to A.R.S. § 11-323. The relevance of § 11-323 is unclear from her argument, as it pertains only to standards counties must adopt for issuing permits for solar energy devices. Moreover, that statute was enacted in 2008, after Parker purchased her home with the device installed. *See* 2008 Ariz. Sess. Laws, ch. 241, § 2.

her solar hot water system “fails to comply with Arizona laws regarding installation and certification by the [SRCC].” She contends the Solar Store failed to provide proper documentation of certification as required by A.R.S. § 44-1762(C), (D)³ and her system does not comply with that statute. She also argues the Solar Store and the manufacturer lack authority to certify her system and any certification issued is void because the system lacks the required label. Parker further asserts the Solar Store has not provided the required warranty for her system and was not a certified installer at the time her system was installed, as required by § 44-1762(E)(3).⁴

¶7 In arguing the system installed by the Solar Store failed to comply with Arizona’s requirements for solar devices, Parker relies on an exhibit titled “State of Arizona Solar Devices: Guidelines and Procedures,” which provides no attribution. Specifically, she refers to a guideline requiring solar water heating systems to comply with the guidelines and procedures of the SRCC. We cannot confirm the applicability or enforceability of the guidelines to which Parker has referred based on the record before

³Section 44-1762(D) requires that any solar energy device sold in Arizona comply with “any consumer protection, rating, certification, performance, marking, installation and safety standards that have been adopted by the department of commerce.” Section 44-1762(C) requires the seller of a solar energy device to furnish a certificate to the buyer indicating the device complies with these statutory requirements.

⁴Parker also argues the Solar Store “never provided or showed proof it me[et] the requirements of the MOU as to meeting the 550 kw/br/yr as required.” Although it is unclear what enforceable requirement she refers to, she cites a Pima County sustainable energy standard that states: “[T]he minimum displacement goal of energy by solar devices is prescribed as a function of residential bedrooms at 550kWh/br/yr.” Parker has not cited to any authority indicating applicability of this “minimum displacement goal” to her system or that the goal must be complied with in some way by the Solar Store. Therefore, we do not address that argument further. *See Polanco*, 214 Ariz. 489, n.2, 154 P.3d at 393-94 n.2.

us and the citations to authority she has provided. Nonetheless, although Parker contends her solar water heater is not SRCC OG-300-certified and she never was provided with proper documentation of certification, the record reflects otherwise. The Solar Store, the manufacturer of Parker’s system, Sun Earth, Inc. (Sun Earth), and TEP all provided Parker with documentation that her system was certified. In addition, two licensed professional engineers testified her system was certified. Parker did not provide evidence sufficient to refute this testimony and documentation.

¶8 On appeal, Parker asserts the Solar Store had no authority to certify the system because it is not an approved SRCC-certified supplier “listed in the Directory of SRCC certified Solar Water Heating Ratings.” And, although she acknowledges that Sun Earth—which manufactured the solar hot water collector installed by the Solar Store—is in that directory, she maintains that company’s representative is not qualified to render an opinion regarding whether the “complete system” installed by the Solar Store met SRCC certification requirements. But Sun Earth’s representative, a mechanical engineer, testified that both Sun Earth and the SRCC allowed for deviations in the installation of a certified system and, apart from certain key components, the use of different component parts that were “equal [to], or better” than those shown in an approved design were acceptable deviations. He stated such modifications were most often dictated by site-specific conditions and did not affect compliance with SRCC certification requirements.⁵

⁵Parker’s brief does not contain any argument supported by citation to the record or authority to indicate the Solar Store departed improperly from specifications for the solar water heater. *See* Ariz. R. Civ. App. P. 13(a)(6). Testimony at the hearing

¶9 Although Parker also contends her system cannot be certified because it lacks the label required by SRCC guidelines, the exhibits she cites to support this requirement either are undated or are dated June 2008, after she purchased the home in 2007 with the system installed.⁶ And she has cited no authority indicating the Department of Commerce had adopted those guidelines, rendering them enforceable under § 44-1762(D), at the time her system was installed. Therefore, we agree with the trial court that “there is nothing in the record . . . that could support a conclusion that The Solar Store violated any law or that its conduct was wrongful or fraudulent by installing a system in 2007 without a label that was required by a rule or regulation dated June 2008.”

¶10 Parker also argues the Solar Store failed to provide the written warranty she claims is required by Arizona guidelines and that any warranty she was given was voided by changes the Solar Store made to the system. The guidelines she asserts are applicable here state that “the purchaser [of a solar heating system] must be furnished with a written . . . statement of warranty coverage.” She concedes, however, that Pulte was the seller of her “home and solar device.” Thus, Pulte, as the seller, would bear any responsibility to provide Parker, as the purchaser, with a written warranty. And, Parker has failed to establish the Solar Store had any such obligation. Moreover, she has not claimed she has been refused warranty coverage. In fact, although Parker contends she needs the written

demonstrated any deviations were permissible and thus supports sufficiently the ALJ’s conclusion.

⁶In her reply brief, Parker provides a website address for an SRCC document dated 2006. This document is not contained in the record and we will not review it. *See Havasu Heights*, 167 Ariz. at 386-87, 807 P.2d at 1122-23 (review limited to whether evidence in record of administrative proceeding supports decision).

warranty to qualify for a TEP rebate, evidence established that TEP previously had offered her the rebate but that she had refused to accept it.

¶11 Finally, Parker also contends the Solar Store was not a certified installer at the time her system was installed, as required by § 44-1762(E)(3). However, the Solar Store's owner testified she held the proper license to install solar water heaters. Similarly, although Parker lists other findings of fact she means to challenge on appeal, those findings merely are summaries of testimony. Parker does not suggest the ALJ's summaries are inaccurate; rather, she disagrees with the testimony. But it is not for this court to judge the credibility of witnesses. *See Holding v. Indus. Comm'n*, 139 Ariz. 548, 551, 679 P.2d 571, 574 (App. 1984) (ALJ sole judge of witness credibility). Upon our review of the record, it is clear that each finding Parker challenges is supported by the record. Moreover, we do not reweigh the evidence and, in reviewing factual determinations, are limited to determining whether substantial evidence supported the administrative decision. *Havasut Heights*, 167 Ariz. at 387, 807 P.2d at 1123.

¶12 We conclude there was substantial evidence to support the ALJ's determinations that Parker failed to establish her host of contentions: the system was not functioning properly and the Solar Store had disregarded or departed from the specifications for her solar water heater, provided poor workmanship, engaged in wrongful or fraudulent conduct, or failed to comply with state law. The majority of the testimony at the hearing, with the exception of that given by Parker's husband, showed the system was SRCC OG-300 certified and functioned properly given the Parker's hot water usage. The ALJ's resolution of Parker's complaint was not illegal, arbitrary,

capricious, or an abuse of discretion. *See id.* at 386, 807 P.2d at 1122. Therefore, we conclude the evidence supported the trial court's judgment affirming the ALJ's and ROC's decisions.

Disposition

¶13 For the reasons stated, we affirm. The Solar Store requests an award of attorney fees but has provided no statutory basis to support the request as Rule 21(c)(1) Ariz. R. Civ. App. P. requires. *See Roubos v. Miller*, 214 Ariz. 416, ¶ 21, 153 P.3d 1045, 1049 (2007) (Rule 21(c)(1) requires attorney fees request state "the statutory or contractual basis for the award"). We therefore deny the request for attorney fees, but award the Solar Store costs as the successful party, contingent on its compliance with Rule 21(a), Ariz. R. Civ. App. P.

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Judge

CONCURRING:

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Presiding Judge

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge